



PO Box 4136
East Richmond VIC 3121
T 131 806
F 1300 661 086
W redenergy.com.au

PO Box 4136
East Richmond VIC 3121
T 1300 115 866
F 1300 136 891
W lumoenergy.com.au



15 March 2022

Ms Sarah Sheppard
Executive Director, Energy
Essential Services Commission
Level 8, 570 Bourke Street
Melbourne VIC 3000

Submitted electronically: licences@esc.vic.gov.au

Dear Ms Sheppard,

Re: Electricity and gas licences for Red Energy and Lumo Energy

I refer to your letters to Red Energy and Lumo Energy (Red and Lumo) on 31 January 2022 regarding the Essential Services Commission's (the Commission) project to review and vary licences issued to each business in accordance with section 29 of the Electricity Industry Act 2000 and section 38 of the Gas Industry Act 2001.

The Commission describes the changes to proposed standard conditions as largely administrative in nature. We note, however, that there are many changes between our licences and the standard. We agree that in general, the Commission is required to reflect recent changes to the regulation of energy in Victoria, improve consistency across all retail operations in Victoria, and remove outdated conditions. We strongly support consistency in licence conditions for all retailers. This provides certainty and underpins a competitively neutral regulatory environment. We also consider it vital that the Commission ensures a consistent and predictable framework in light of legislative changes in 2021 that grant the Minister for Energy to introduce specific or broad licence conditions that apply in addition to any conditions imposed by the Commission.

However, we propose a number of amendments to the proposed conditions, as discussed below.

Licence variations and revocations

We request further clarification from the Commission about how the proposed clause for the variation of licences will operate in practice before we consent to its introduction. The Commission proposes that it should be able to vary a licence without prior notice if the variation is 'of an administrative or trivial nature' or is 'required urgently'. We seek further detail from the Commission about how it would make this judgement without first consulting with the affected retailer(s). What the Commission views as administrative or trivial may actually require some or all retailers to make significant changes to processes and systems, including their approach to managing compliance risks.

The Commission cannot be expected to fully appreciate all aspects of a proposed licence variation so the requirement to publish a notice in advance is an important safeguard that will allow the Commission to make a more informed decision about how to proceed.

We also recommend an amendment to the proposed template licence condition 6.2. This will grant the Commission the ability to revoke a licence in certain circumstances. The Commission proposes under 6.2(ii) that it can revoke a licence if a Licensee breaches '**any** condition of this Licence' (emphasis added), which includes compliance with the Energy Retail Code of Practice. This clause should be narrowed to specify that the Commission can revoke a licence if a Licensee fails to comply with an enforcement action as it proposes (and which remains appropriate) but amended to clarify that revocation can occur in the event that a breach of a licence condition is causing 'serious and immediate detriment to customers'. This is the wording in the equivalent clause in both Red Energy's and Lumo Energy's current electricity licences (3.5) and we recommend the Commission retain this clause in lieu of the proposed 6.2 clause. Otherwise, the Commission has the power to revoke a licence in the event of any breach of the Energy Retail Code of Practice, even if it is minor and causing no consumer detriment. The current limitation in Red and Lumo's licences remain appropriate and will provide confidence to us and our customers that the supply of their energy will be maintained even in the event of a minor compliance breach that has not proceeded to enforcement action.

Transparency

We strongly encourage the Commission to publish details of all Ministerial licence conditions on its website to provide a consolidated point of reference for retailers. There is no equivalent to the Commission's publication of all retail and distribution licences for these additional Ministerial conditions at present. Further, the Commission should also maintain a public register of all Orders in Council which contain any prohibitions as outlined in clause 3.4 of the proposed standard licences.

Red and Lumo see considerable value in the Commission providing a single source of information about all applicable licence conditions that all retailers can easily access.

Other comments

We note the Commission's proposal to amend clauses relating to the provision of information to customers, such as advanced notice of price changes or the end of a fixed term contract, as the Energy Retail Code of Practice prescribes protections for small consumers. We encourage the Commission to take the opportunity to remove these clauses altogether and therefore, remove requirements for consumers who fall outside the scope of the Code of Practice. These obligations are not necessary in the case of larger consumers, many of whom have bespoke contracts and dedicated account managers. In addition to the commercial incentives for retailers to provide any relevant information to these consumers, Australian Consumer Law also means that retailers must ensure their customers fully understand the terms and conditions of their contracts, including their rates. Removing these requirements from retail licences will reduce the administrative burden of supplying energy to these consumers.

Red and Lumo see no need for clause 3.1(ii) in the proposed Standard Electricity Licence Condition, which states that a licence must have '*such additional technical capacity as is reasonably required to*



enable it to meet and utilise technological advances in the electricity industry. Retailers will trial and adopt technologies that they believe will maximise their ability to offer a compelling combination of price and service standards in a competitive market. A literal interpretation of this clause implies the Commission could mandate that a retailer adopt a specific technology, although it is a regulatory agency and is therefore unable to assess or predict which technologies will deliver benefits to consumers over the longer term. We strongly recommend the removal of this clause.

We note that the current clause 6.3 in the Red Energy electricity licence is not replicated in the standard licence conditions. The proposed standard clause 8.3 excludes a reference to the Commission having the ability to determine whether a use of system agreement 'unreasonably discriminates, or has the effect of creating unreasonable discrimination'. This implies a retailer can seek the Commission's opinion in the event of a dispute. It is vital the electricity and gas distribution networks avoid discrimination between retailers (or favour any ring-fenced affiliate) so we recommend the Commission vary the proposed standard condition in line with Red's current electricity licence. This is in addition to retaining the prohibition on discrimination in distribution licences.

We also recommend the Commission remove references to Use of System Agreements in gas licences. Retailers enter into Use of System Agreements with electricity distributors and the Commission has developed a default use of system agreement document. However, the concept of a Use of System Agreement does not exist for gas, as the retailers and distributors enter into Terms and Conditions that form part of the distributor's Gas Access Agreement.

About Red and Lumo

We are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in Victoria, New South Wales, Queensland, South Australia and in the ACT to over 1.1 million customers.

Thank you for the opportunity to respond to the Commission's licensing review. Please contact [REDACTED] [REDACTED] Regulatory Manager on [REDACTED] if you have any further queries or wish to discuss this submission in more detail.

Yours sincerely

[REDACTED]

[REDACTED]
Manager - Regulatory Affairs
Red Energy Pty Ltd
Lumo Energy (Australia) Pty Ltd